

AO 120 (Rev.3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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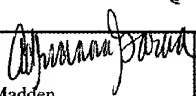

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised
that a court action has been filed in the U.S. District Court San Diego on the following Patents or Trademarks:

DOCKET NO. 07cv1994-DMS	DATE FILED 10/15/2007	U.S. DISTRICT COURT Southern District of California
PLAINTIFF Matlink, Inc.		DEFENDANT Home Depot, et al.
PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.
1 See Attached 6, 134, 557	6	11
2 6,950,826	7	12
3	8	13
4	9	14
5	10	15

In the above-entitled case, the following patent(s)/trademark(s) have been included:

DATE INCLUDED	INCLUDED BY			
	<input type="checkbox"/> Amendment	<input type="checkbox"/> Answer	<input type="checkbox"/> Cross Bill	<input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.
1	6		11	
2	7		12	
3	8		13	
4	9		14	
5	10		15	

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT	
	
CLERK W. Samuel Hamrick, Jr.	(BY) DEPUTY CLERK  DATE  S/K. Madden 10/16/2007

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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 MATLINK, INC., a California Corporation,
12 and CRAIG FREEMAN, an individual

13 Plaintiffs,

14 v.

15 HOME DEPOT U.S.A., INC., a Delaware
16 Corporation; LOWE'S H I W, INC., a North
17 Carolina Corporation,

18 Defendants.

19
20 AND ALL RELATED COUNTERCLAIMS.
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CASE NO. 07cv1994 DMS(BLM)

ORDER VACATING JUDGMENT

29 On September 18, 2008, this Court entered a Judgment in a Civil Case pursuant to the Court's
30 order granting Defendants' motion for summary judgment. That order resolved the sole claim in
31 Plaintiff's Second Amended Complaint, but did not explicitly address the Defendants' Counterclaims.
32 Counsel for Defendant Home Depot informed the Court that the parties are working on a proposed
33 final judgment that addresses all claims, and that counsel will either submit that proposed final
34 judgment to the Court for its review and signature or advise the Court that the parties are unable to
35 agree, in which case the Court will enter its own final judgment that addresses all claims. In light of
36 these events, the Court vacates the Judgment entered on September 18, 2008. Counsel shall either file

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ORIGINAL**FILED**

07 OCT 15 PM 3:52

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIABY: 

DEPUTY

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Attorneys for Plaintiff

10 **UNITED STATES DISTRICT COURT**
 11 **SOUTHERN DISTRICT OF CALIFORNIA**

MATLINK INC., a California Corporation,

Plaintiff

v.

16 THE HOME DEPOT, INC., a Delaware
 Corporation; LOWE'S COMPANIES INC.,
 17 a North Carolina Corporation,

Defendants.

Case Number: 07 CV 1994 DMS (BLM)

**COMPLAINT FOR PATENT INFRINGEMENT
 OF U.S. PATENT NOS. 6,134,557 AND
 6,950,826, AND FOR PERMANENT
 INJUNCTIONS**

JURY TRIAL DEMANDED

Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. This court has personal jurisdiction over the Defendants because they are domiciled within the state and/or have consented to personal jurisdiction and/or because the Defendants have maintained minimum contacts with this forum state such that the exercise of personal jurisdiction does not offend traditional notions of fair play and substantial justice and/or because the Defendants have maintained activities which are substantial, continuous and systematic and/or the Defendants have purposefully established contacts with this forum and/or the claims alleged arise out of or are related to Defendants' contacts with this forum.

2. This action for patent infringement and injunctive relief arises under the patent laws of the United States, Title 35 of the United States Code, and under 28 U.S.C. § 2201.

3. This Court has subject matter jurisdiction under the patent laws of the United States, 35 U.S.C. § 1 et seq. and under 28 U.S.C. §§ 1331, 1338(a), and 2201.

4. Venue is proper under 29 U.S.C. §§ 1391 (b), (c) and 1400 (b) in the Southern District of California in that there is personal jurisdiction over the corporate Defendants at the commencement of this action in this district. (*VE Holding Corp. v. Johnson Gas Appliance Co.* (1990) 917 F2d 1574, 1583.) Additionally, this district is the judicial district in which a substantial part of the events or omissions giving rise to the claim occurred and where the corporate Defendant maintains a principal place of business, and/or where liability arises, and/or where the individual Defendant resides.

PARTIES

5. Plaintiff Matlink Inc. ("Matlink") is a corporation organized and existing under the laws of the State of California, having a principal place of business in Anza, California.

6. Plaintiff alleges on information and belief that Defendant The Home Depot, Inc. ("Home Depot") is a corporation organized and existing under the laws of the state of Delaware, having its principal place of business in Atlanta, Georgia, and doing business in San Diego, California.

7. Plaintiff alleges on information and belief that Defendant Lowe's Companies Inc. ("Lowe's") is a corporation organized and existing under the laws of the State of North Carolina, having a principal place of business in Mooresville, North Carolina, and doing business in San Diego, California.

FIRST CLAIM FOR RELIEF

INFRINGEMENT OF PATENT NO. 6,134,557

(Against Defendant The Home Depot, Inc.)

8. Plaintiff hereby incorporates by this reference each and every allegation preceding and subsequent to this claim for relief as part of this claim for relief as though set forth in full

1 at this point.

2 9. United States Patent No. 6,134,557 (the "'557 Patent") issued on October 17,
3 2000. A true and correct copy of the '557 Patent is attached hereto as **Exhibit 1** and
4 incorporated herein by this reference.

5 10. Craig Freeman is the sole owner of the '557 Patent.

6 11. Plaintiff Matlink Inc. is the exclusive licensee of the '557 Patent.

7 12. Plaintiff is informed and believes that Home Depot has infringed, and still is
8 infringing, the '557 patent by making, using, selling, offering for sale and/or licensing products
9 and services covered by one or more claims of the '557 Patent without Plaintiff's authorization
10 or consent. These products and services include, *inter alia*, Home Depot's web site provides a
11 method to order construction materials and supplies for contractors and the general public to
12 be picked-up at regional sites or delivered to a specific site.

13 13. Plaintiff is informed and believes that Home Depot has infringed the '557 Patent,
14 and will continue to do so unless enjoined by this Court.

15 14. Plaintiff is informed and believes and thereon alleges that Home Depot is aware
16 of the '557 Patent and that Home Depot's infringement has been willful. Plaintiff alleges that
17 prior to the filing of this action, Plaintiff notified Home Depot of its infringement of the '557
18 Patent and Home Depot failed to cease its infringement of the '557 Patent.

19 15. By reason of the foregoing, Plaintiff has suffered damages in an amount to be
20 proven at trial and has suffered irreparable loss and injury.

21 16. The acts of infringement described above are willful, deliberate and in reckless
22 disregard of Plaintiff's patent rights.

23 **SECOND CLAIM FOR RELIEF**

24 **INFRINGEMENT OF PATENT NO. 6,950,826**

25 ***(Against Defendant The Home Depot, Inc.)***

26 17. Plaintiff hereby incorporates by this reference each and every allegation preceding
27 and subsequent to this claim for relief as part of this claim for relief as though set forth in full
28

1 at this point.

2 18. United States Patent No. 6,950,826 (the "'826 Patent") issued on September 27,
3 2005. A true and correct copy of the '826 Patent is attached hereto as **Exhibit 2** and
4 incorporated herein by this reference.

5 19. Craig Freeman is the sole owner of the '826 Patent.

6 20. Plaintiff Matlink Inc. is the exclusive licensee of the '826 Patent.

7 21. Plaintiff is informed and believes that Home Depot has infringed, and still is
8 infringing, the '826 Patent by making, using, selling, offering for sale and/or licensing products
9 and services covered by one or more claims of the '826 Patent without Plaintiff's authorization
10 or consent. These products and services include, *inter alia*, Home Depot's web site provides a
11 method to order construction materials and supplies for contractors and the general public to
12 be picked-up at regional sites or delivered to a specific site.

13 22. Plaintiff is informed and believes that Home Depot has infringed the '826 Patent,
14 and will continue to do so unless enjoined by this Court.

15 23. Plaintiff is informed and believes and thereon alleges that Home Depot is aware
16 of the '826 Patent and that Home Depot's infringement has been willful. Plaintiff alleges that
17 prior to the filing of this action, Plaintiff notified Home Depot of its infringement of the '826
18 Patent and Home Depot failed to cease its infringement of the '826 Patent.

19 24. By reason of the foregoing, Plaintiff has suffered damages in an amount to be
20 proven at trial and has suffered irreparable loss and injury.

21 25. The acts of infringement described above are willful, deliberate and in reckless
22 disregard of Plaintiff's patent rights.

23 **THIRD CLAIM FOR RELIEF**

24 **INFRINGEMENT OF PATENT NO. 6,134,557**

25 ***(Against Defendant Lowe's Companies Inc.)***

26 26. Plaintiff hereby incorporates by this reference each and every allegation preceding
27 and subsequent to this claim for relief as part of this claim for relief as though set forth in full
28

1 at this point.

2 27. United States Patent No. 6,134,557 (the "'557 Patent") issued on October 17,
3 2000. A true and correct copy of the '557 Patent is attached hereto as **Exhibit 1** and
4 incorporated herein by this reference.

5 28. Craig Freeman is the sole owner of the '557 Patent.

6 29. Plaintiff Matlink Inc. is the exclusive licensee of the '557 Patent.

7 30. Plaintiff is informed and believes that Lowes has infringed, and still is infringing,
8 the '557 patent by making, using, selling, offering for sale and/or licensing products and services
9 covered by one or more claims of the '557 Patent without Plaintiff's authorization or consent.
10 These products and services include, *inter alia*, Lowes' web site provides a method to order
11 construction materials and supplies for contractors and the general public to be picked-up at
12 regional sites or delivered to a specific site.

13 31. Plaintiff is informed and believes that Lowes has infringed the '557 Patent, and
14 will continue to do so unless enjoined by this Court.

15 32. Plaintiff is informed and believes and thereon alleges that Lowes is aware of the
16 '557 Patent and that Lowes' infringement has been willful. Plaintiff alleges that prior to the
17 filing of this action, Plaintiff notified Lowes of its infringement of the '557 Patent and Lowes
18 failed to cease its infringement of the '557 Patent.

19 33. By reason of the foregoing, Plaintiff has suffered damages in an amount to be
20 proven at trial and has suffered irreparable loss and injury.

21 34. The acts of infringement described above are willful, deliberate and in reckless
22 disregard of Plaintiff's patent rights.

23 **FOURTH CLAIM FOR RELIEF**

24 **INFRINGEMENT OF PATENT NO. 6,950,826**

25 ***(Against Defendant Lowe's Companies Inc.)***

26 35. Plaintiff hereby incorporates by this reference each and every allegation preceding
27 and subsequent to this claim for relief as part of this claim for relief as though set forth in full
28

1 at this point.

2 36. United States Patent No. 6,950,826 (the "'826 Patent") issued on September 27,
3 2005. A true and correct copy of the '826 Patent is attached hereto as **Exhibit 2** and
4 incorporated herein by this reference.

5 37. Craig Freeman is the sole owner of the '826 Patent.

6 38. Plaintiff Matlink Inc. is the exclusive licensee of the '826 Patent.

7 39. Plaintiff is informed and believes that Lowes has infringed, and still is infringing,
8 the '826 Patent by making, using, selling, offering for sale and/or licensing products and services
9 covered by one or more claims of the '826 Patent without Plaintiff's authorization or consent.
10 These products and services include, *inter alia*, Lowes' web site provides a method to order
11 construction materials and supplies for contractors and the general public to be picked-up at
12 regional sites or delivered to a specific site.

13 40. Plaintiff is informed and believes that Lowes has infringed the '826 Patent, and
14 will continue to do so unless enjoined by this Court.

15 41. Plaintiff is informed and believes and thereon alleges that Lowes is aware of the
16 '826 Patent and that Lowes' infringement has been willful. Plaintiff alleges that prior to the
17 filing of this action, Plaintiff notified Lowes of its infringement of the '826 Patent and Lowes
18 failed to cease its infringement of the '826 Patent.

19 42. By reason of the foregoing, Plaintiff has suffered damages in an amount to be
20 proven at trial and has suffered irreparable loss and injury.

21 43. The acts of infringement described above are willful, deliberate and in reckless
22 disregard of Plaintiff's patent rights.

23
24 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

25 1. That Defendants have infringed the '557 and '826 Patents under 35 U.S.C. § 271
26 (a), (b), (c), and (g);

27 2. That Defendants have induced infringement and/or contributorily infringed the
28 '557 and '826 Patents;

3. Enjoining and restraining each Defendant, its officers, agents, subsidiaries, servants, partners, employees, attorney and all others in active concert or participation with Defendants from:

- a. Making, using, selling, importing, or offering to sell any goods that in any way infringe, either literally or under the Doctrine of Equivalent the '557 and the '826 patents, and
 - b. Inducing or contributorily infringing the '557 and '826 Patents.
4. That Defendant's infringements of the '557 and the '826 Patents were willful;
 5. For an award of damages adequate to compensate Matlink Inc. for Home Depot's infringement of the '557 and '826 Patents, but no less than a reasonable royalty;
 6. For an award of trebled damages as an enhancement pursuant to 35 U.S.C. § 284;
 7. For an award of attorney's fees pursuant to 35 U.S.C. §285;
 8. For pre-judgment interest;
 9. For costs;
 10. For such further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

In accordance with Fed. Rule Civ. Proc. 38(b) Plaintiff MATLINK INC. demands trial by jury on all issues so triable.

Respectfully submitted,

Dated: October 15, 2007

WIRTZ HELLENKAMP LLP

By: 

Richard M. Wirtz
Attorney for Plaintiff

Dated: October 15, 2007

MICHAEL E. KLICPERA

By: 

Michael E. Klicpera
Attorney for Plaintiff

United States District Court

SOUTHERN DISTRICT OF CALIFORNIA

Matlink Inc., a California Corporation and Craig
Freeman, an individual,

V.

JUDGMENT IN A CIVIL CASE

Home Depot U.S.A. Inc., a Delaware Corporation;
Lowe's HIW Inc., a North Carolina Corporation,

CASE NUMBER: 07cv1994-DMS-BLM

☐

Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

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Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

The Court grants Defendants' motion for summary judgment of invalidity based on indefiniteness.

September 18, 2008

Date

W. Samuel Hamrick, Jr.

Clerk

s/ L Odierno

(By) Deputy Clerk

ENTERED ON September 18, 2008